

\*1 Office of the Attorney General  
State of Tennessee

Opinion No. 86-026  
February 5, 1986

COUNTIES: Commission/Commissioners/Legislative Bodies: Compensation:  
Executives: Interlocal Cooperation

Eligibility of members of the Shelby County area "9-1-1" **Emergency Communications** District Board to participate in an existing local retirement system; Authority of the Shelby County area "9-1-1" **Emergency Communications** District Board to establish its own retirement system; Authority of the Shelby County Board to enter into agreements with local governments to allow for convenience transfers. T.C.A. §§ 7-86-101 et seq., 8-35-201, 68-25-102; Pr.A. 1945, Ch. 72; Memphis Charter § 53.1; Ops.Tenn.Atty.Gen. 82-390 (August 2, 1982), 85-205 (June 27, 1985).

COURTS: County:

Eligibility of members of the Shelby County area "9-1-1" **Emergency Communications** District Board to participate in an existing local retirement system; Authority of the Shelby County area "9-1-1" **Emergency Communications** District Board to establish its own retirement system; Authority of the Shelby County Board to enter into agreements with local governments to allow for convenience transfers. T.C.A. §§ 7-86-101 et seq., 8-35-201, 68-25-102; Pr.A. 1945, Ch. 72; Memphis Charter § 53.1; Ops.Tenn.Atty.Gen. 82-390 (August 2, 1982), 85-205 (June 27, 1985).

MUNICIPAL CORPORATIONS: Charter: Municipal Powers:

Eligibility of members of the Shelby County area "9-1-1" **Emergency Communications** District Board to participate in an existing local retirement system; Authority of the Shelby County area "9-1-1" **Emergency Communications** District Board to establish its own retirement system; Authority of the Shelby County Board to enter into agreements with local governments to allow for convenience transfers. T.C.A. §§ 7-86-101 et seq., 8-35-201, 68-25-102; Pr.A. 1945, Ch. 72; Memphis Charter § 53.1; Ops.Tenn.Atty.Gen. 82-390 (August 2, 1982), 85-205 (June 27, 1985).

RETIREMENT: Tennessee Consolidated Retirement System (T.C.R.S.):

Eligibility of members of the Shelby County area "9-1-1" **Emergency Communications** District Board to participate in an existing local retirement system; Authority

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of the Shelby County area "9-1-1" **Emergency Communications** District Board to establish its own retirement system; Authority of the Shelby County Board to enter into agreements with local governments to allow for convenience transfers. T.C.A. §§ 7-86-101 et seq., 8-35-201, 68-25-102; Pr.A. 1945, Ch. 72; Memphis Charter § 53.1; Ops.Tenn.Atty.Gen. 82-390 (August 2, 1982), 85-205 (June 27, 1985).

Mr. Brian L. Kuhn  
County Attorney  
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Dear Mr. Kuhn:

This letter responds to your request for an opinion concerning the following topics:

#### QUESTIONS

- 1) Can employees of the Shelby County area "9-1-1" **Emergency Communications** District Board participate in an existing local retirement system?
- \*2 2) Can the Shelby County area "9-1-1" **Emergency Communications** District Board establish its own retirement system?
- 3) If the Shelby County area "9-1-1" **Emergency Communications** District Board can establish its own retirement system, can the Board also work out an agreement between other local governments to allow for convenience transfers such as the one that now exists between the City of Memphis and Shelby County?

#### OPINIONS

- 1) Neither the Private Acts of 1945, Chapter 72, governing the Shelby County pension system, nor Section 53.1 of the Charter of the City of Memphis, which governs the City retirement system, provide authority for participation in those pension systems by employees of the Shelby County area "9-1-1" **Emergency Communications** District Board.
- 2) There is presently no statutory authority authorizing the Shelby County area "9-1-1" **Emergency Communications** District Board to establish its own retirement system. However the **Emergency Communications** District Board, as a political subdivision, may participate in the Tennessee Consolidated Retirement System, as set forth in T.C.A. § 8-35-201.

3) Because it was opined in Section 2, *supra*, that the Shelby County area "9-1-1" **Emergency Communications** District Board is not authorized to establish its own retirement system, this question is moot.

#### ANALYSIS

##### I.

In order for the employees of the Shelby County area "9-1-1" **Emergency Communications** District Board to participate in either the Shelby County pension system or the City of Memphis retirement system, the employees of the District Board must fall within the ambit of eligible participants for each respective local retirement system. This issue was well-researched in an opinion by Thomas R. Russell of your office, referred to in your opinion request, a copy of which was received from you in our office on January 28, 1986. As was noted, the Private Acts of 1945, Chapter 72, Section 2 defines the authority for Shelby County to establish a pension system for county employees as follows:

... the Quarterly County Courts in counties of a population as above set out, are hereby authorized in their discretion and by proper resolution to establish a retirement or pension system or system for the officials and employees of the counties and may likewise so provide for the disability and retirement or pension system or systems to cover permanent, partial or temporary disabilities incurred by employees of such counties. If and when this retirement or pension system or systems shall be established, all public employees of such counties, who may be designated by the said Quarterly County Courts, shall be eligible to its benefits,.... (emphasis added).

Consequently, the Shelby County Board of County Commissioners (which was formerly the Quarterly County Court) was given the authority to establish a retirement system. However the specific language of Section 2, emphasized above, clearly indicates that only the officials and public employees of the county are eligible to participate in the benefits afforded under the Shelby County retirement system.

\*3 T.C.A. §§ 7-86-101, et seq., authorizes the creation, structure, operation and funding of "**Emergency Communications** Districts" such as the Shelby County area "9-1-1" **Emergency Communications** District, and its Board. T.C.A. § 7-86-104(a) provides that the legislative body of any municipality or county may, by ordinance or resolution, create an **Emergency Communications** District within all or part of the boundaries of such municipality or county, after an election authorizing such a decision is held in conformity with subsection (b). The legislative body may then appoint a board of directors, pursuant to T.C.A. § 7-86-105(b). T.C.A. § 7-86-105(g) gives the board the authority to employ such employees, experts and consultants as it may deem necessary to assist the board in the discharge of its responsibilities to the extent that funds are made available.

The specific status of the **Emergency Communications** District as created pursuant to the aforementioned provisions is set forth in T.C.A. § 7-86-107 as follows:

The **emergency communications** district so created shall be a "municipality" or public corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes.

Funding for the operation of the **Emergency Communications** Districts so created is obtained from three statutorily authorized sources: (1) the emergency telephone service charge set forth in T.C.A. § 7-86-108; (2) funds from federal, state and local government sources, which the district may receive as well as funds from private sources, as set forth in T.C.A. § 7-86-109, and (3) funds from the issuance of bonds as set forth in T.C.A. § 7-86-114, and as referred to in T.C.A. § 7-86-109.

As a "municipal corporation" with its own source of funding, it seems clear that an **Emergency Communications** District is a separate entity, distinct and autonomous from the county in which it is located. The **Emergency Communications** District law nowhere dictates that the districts created thereunder are to be controlled by or are a part of the county in which they may be located. To the contrary, this office has previously recognized the complete functional autonomy of the districts in opining that contracts awarded by the Shelby County **Emergency Communications** District in excess of \$50,000 do not require the approval of the Shelby County Commission as a prerequisite to their award. See, Op.Tenn.Atty.Gen. U85-039 (August 8, 1985). Consequently, employees hired by the **Emergency Communications** District Board pursuant to the provisions of T.C.A. § 7-86-105(g) are not officials or public employees of Shelby County, as would be required for eligibility to participate in the Shelby County Retirement System.

In a similar manner, Section 53.1 of the Charter of the City of Memphis sets forth the authority for the establishment of a retirement system as follows:

\*4 The board of commissioners of said City of Memphis shall have power by ordinance to establish a retirement or pension system or systems for all elected officials, including the mayor and the board of commissioners of the City of Memphis and all other officers and employees of said City of Memphis. (Priv. Acts 1951, Ch. 377, § 1). (emphasis added).

Applying the same analysis as is relative to participation in the Shelby County Retirement System, it seems clear that any employees of the **Emergency Communications** District are not "city" employees, and are therefore precluded from participation in the City of Memphis Retirement System which is expressly limited to city employees.

## II.

The statutory scheme authorizing the creation and operation of the **Emergency Communications** Districts (T.C.A. §§ 7-8-101, et seq.) is completely devoid of any provisions establishing or authorizing the district boards to establish a retirement system for any employees hired pursuant to T.C.A. § 7-86-105(g). As noted in 60 Am.Jur.2d, Pensions and Retirement Funds, § 41, p. 910:

The rule prevailing in most jurisdictions is that the legislature has power to require municipalities to pension their employees and to raise the funds for that purpose.... In some jurisdictions, statutes have been enacted which expressly authorize municipal corporations, or specified classes thereof, to provide pensions for municipal employees generally, while in other jurisdictions the same result is reached by necessary implication, as under constitutional and statutory provisions setting up a home-rule form of government for municipalities. Under the above analysis, there appear to be two methods to reach a determination

that a municipal corporation has the authority to establish a pension system. First, and the most prevalent method, is that the legislature may enact law expressly requiring the municipal corporation to pension its employees. As previously noted, no such legislation was included in the **Emergency Communications** District law. Second, the authority to establish a pension for municipal employees may be implied as a constitutional or statutory intendment of a "home-rule" form of government for the municipality in question. The legislature has nowhere implied a broad "home-rule" system for the exercise of powers by an **Emergency Communications** District. Rather, the power to be exercised is vested completely in a majority of the members of the board of directors of each district pursuant to T.C.A. § 7-86-106, and the statutory scheme envisions a carefully tailored legislative objective with board authority limited to the achievement of that objective. Thus a "home-rule" situation is nowhere indicated by the specific legislation involved herein.

Although the legislature has not authorized the establishment of a retirement system by an **Emergency Communications** District Board for the benefit of any employees hired by the board, there remains an alternative set forth in T.C.A. § 8-35-201 for such employees to participate in the Tennessee Consolidated Retirement System. T.C.A. § 8-35-201(a) sets forth that:

\*5 The chief legislative body of any political subdivision of the state, not participating under §§ 8-35-212--8-35-214 may, by resolution legally adopted and approved by said chief legislative body, authorize all its employees in all of its departments or instrumentalities to become eligible to participate in the retirement system....

In our response to a previous opinion request which you directed to our office, an **Emergency Communications** District was opined as being encompassed within the definition of a "political subdivision". See, Op.Tenn.Atty.Gen. 85-205 (June 27, 1985). Additionally, a "political subdivision" has been opined as referring to geographical governmental units smaller than the state, rather than a functional division of state government. See, Op. Tenn.Atty.Gen. 82- 390 (August 2, 1982). This construction of the phrase "political subdivision" is consistent with the statutory definition set forth in T.C.A. § 68-25- 102(8) as "any municipality, city, incorporated town, county, district or authority, or any portion or combination of two (2) or more thereof." An **Emergency Communications** District is both a "municipality" (as noted in T.C.A. § 7-86-106) as well as a "district", within the above definitive examples of a "political subdivision." Consequently, by complying with the prerequisites set forth in T.C.A. § 8-35-201, the Board of the **Emergency Communications** District may, by resolution, authorize its employees to participate in the Tennessee Consolidated Retirement System, subject to the approval of the board of trustees of the T.C.R.S.

### III.

Because the analysis set forth in Section 2 opines that the Shelby County area "9-1-1" **Emergency Communications** District Board is not authorized to establish its own retirement system, your question concerning "convenience transfers" is rendered moot.

If you have further questions or comments about this matter, please feel free to

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contact us.

Sincerely,

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